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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1250

IRMA GROSSMAN AND DAVID GROSSMAN,
Petitioners,

v.

BERNARD PEARLMAN, ALAN KRUMHOLZ AND MORRIS F. PEARLMAN,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

IRMA GROSSMAN, *pro se,*
DAVID GROSSMAN, *pro se,*
287 Avenue C,
New York, New York.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States of America:

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this cause on January 25, 1966, denying petitioners' application for a rehearing of the Orders affirmed in the Courts below.

Opinions Below

The opinion of the Southern District Court of New York by Judge J. D. Bonsal is set forth as Appendix A1 to this petition.

The opinion of the Southern District Court of New York by Judge Wyatt is set forth as Appendix A2 to this petition.

The opinion of the United States Court of Appeals on the two joined motions decided December 2, 1965 is set forth as Appendix A3 to this petition.

Rehearing of the orders were refused on January 25, 1966 as set forth as Appendix A4 to this petition.

Jurisdiction

The jurisdiction of this Court is invoked under the United States Constitution Article III; section 2.

Questions Presented

1. Whether criminal code of Title 18 Section 1341 would be applicable to allow summons to be served outside the New York jurisdiction in order to try the defendants for Civil injury coming out of the criminal statute.

2. When the Court can not correct an issue brought before it but in hearing the issue general issues which affect the welfare of the public are brought to the court's attention, does the court have an obligation to protect the public's interest?

Constitutional Provision Involved

Article III; section two

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—between Citizens of different States."

Federal Law Involved

Title 18 Section 1341 of the U. S. Code

> "Frauds and Swindles. Whoever, having devised or intending to devise a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give aways, distribute supply, or furnish or procure for unlawful use any counterfeit or spurious, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or article or attempting so to do, places in any

post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, as such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both."

Statement of the Case

Plaintiffs who are residents of New York served summons on M. F. Pearlman, a New Jersey attorney. Motion was made to dismiss the suit for lack of jurisdiction.

B. Pearlman and A. Krumholz were held in suit in New Jersey state court. M. F. Pearlman had been dismissed by an alleged fault in pleading.

Plaintiffs thereupon filed a motion to join the other two defendants in suit in the Federal Courts of New York.

The two appeals were consolidated for argument before the U. S. Court of Appeals for the Second Circuit.

Each of the two orders were affirmed. It is from this action the plaintiffs appeal.

Reasons for Granting the Writ

I

Neither the Circuit Court nor the lower courts made any mention of the legality of Title 18 Section 1341 of the U. S. Code which the plaintiffs relied on for the service of the summons and the ability to keep the defendants for suit in the New York Federal Courts.

"Frauds and Swindles, whoever, having devised or intending to devise any scheme or article to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose or loan, exchange, alter, give aways, distribute supply, or furnish or procure for unlawful use any counterfeit or spuri-

> ous, obligation, security, or other article, or anything represented to be or initiated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or article or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, and such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both."

Plaintiff's opening sentence of the complaint reads "We are residents of New York" this according to Article III; Section Two of the United States Constitution gave us the right of the use of the Federal Courts. The above section of the U. S. Code 1341 Penal Law makes it possible for the defendant to be served summons anywhere and at any time. Although the plaintiffs are not suing in a direct criminal action, they are suing out of the civil harm issued out of that criminal action.

M. F. Pearlman sent many letters directly to the plaintiff's home in New York. At page 11a is a letter M. F. Pearlman sent to Mr. Grossman's work address. This letter contains information on Irma Grossman's case. In order for Mr. Grossman to relay this letter to his wife he must become M. F. Pearlman's agent and transport the letter over the state line. Plaintiffs have always alleged M. Pearlman had already purportedly settled Mr. Grossman's personal injury suit. This letter gives the aurora of a voluntary settlement to come with the agreeing to of this letter. The letter therefore was fraudulent in intent and a violation to the aforementioned U. S. Penal Code.

As the plaintiffs showed in the original motion for change of Venue was sent to Mrs. Grossman's doctor in

N. Y. for the sole purpose of coercing him into giving information about Mrs. Grossman's injuries, as there was no motion in the New Jersey Courts to put aside Mrs. Grossman's case the letter to the doctor was fraudulent of contents.

The argument of both issues on appeal are the same as Point I. Just as the defendant M. F. Pearlman should be held for jury trial the other two defendants should be made to join him as the acts of coercion, duress, mail fraud, malpractice and the purported settlement are inseparable.

II

In the minds of Americans at large the words lawyer and shyster have become synonymous. This is truest in the negligence field which is about the only law the majority of the nation have or will be involved in. The people are not only monetarily cheated they are defrauded out of their so called "constitutional rights".

Today the supposed guarantee of trial by jury in suits of law are given or taken away by the discretion of the very attorney one seeks to be represented by. The public doesn't know to demand this right in writing; so that at pretrial when he is informed that he will be trialed by a judge with no jury if he has the sense to object he will be told "it's too late now" or "the lawyer knows what's best for you". The attorney of course gets his retainer signed as soon as you set your foot in his door.

There is no legislature which controls attorneys in any state, legislature that has teeth enough to protect the people. In every state there is a bar association and an ethics committee that is controlled by the bar association. Both of course are controlled completely by attorneys and both have no public representation.

In applying to the Supreme Court of the U. S. In Cert. 385 and 822 *Grossman* v. *Stubbs,* both Oct. Term, 1964, we pointed out gross injustices that were committed against us by the defendants named in this suit. We also

attempted to bring to the court's attention the chaotic conditions of negligence law. Proceeding in negligence suit in one state the laws would read one way. Proceeding in another state the laws would read another way. Finding out about the law for the laymen would depend on which states attorney he would happen to fall in with. The reading of the law would depend on what's better for the lawyer, not the victim. Previously I had asked all the courts up to this Supreme Court of the U. S. "Who protects the people?", now I ask "Must there be upheaval, riot and near revolution such as in the Civil Rights and Viet Nam crises before the court speaks out, or is it the responsibility of the courts to at least acknowledge the need for change in the existing negligence laws and control of attorneys."

CONCLUSION

For the foregoing reasons this petition for Writ of Certiorari should be granted.

Respectfully submitted,

IRMA GROSSMAN, *pro se*
DAVID GROSSMAN, *pro se*

Endorsement of Judge Bonsal

ENDORSEMENT

IRMA GROSSMAN and DAVID GROSSMAN

v.

BERNARD PEARLMAN, ALAN KRUMHOLZ and MORRIS PEARLMAN

65 Civ. 1696

Motion #12 on 7/13/65 Calendar

Plaintiffs, appearing *pro se,* filed a complaint in this Court on June 3, 1965, basing jurisdiction on diversity of citizenship. According to the Marshal's return, service on one of the defendants, Morris Pearlman, who the complaint alleges to be a citizen of New Jersey, was effected in Jersey City, New Jersey on June 8, 1965, and defendant Morris Pearlman, appearing specially, has moved to dismiss the action for lack of personal jurisdiction over him.

In their complaint, plaintiffs allege that, while acting as their attorney in New Jersey, defendant Morris Pearlman settled a New Jersey action without authorization from the plaintiffs and "presented a lein (sic) on which he collected 40% by fraud and deceit".

Plaintiffs further allege that defendant Morris Pearlman made derogatory remarks with respect to plaintiffs in Bergen County Court, Hackensack, New Jersey.

Rule 4(e) of the Federal Rules of Civil Procedure authorizes out of state service if provided for by the laws of the state in which the District Court is located. The only applicable provision of the New York law would be C.P. L.R. §313, which provides for service outside the state on a New York domiciliary. There is no evidence that defendant Pearlman is a New York domiciliary. On the contrary, it appears that he is a resident of New Jersey, maintains a law office in Jersey City, and the complaint

Endorsement of Judge Bonsal

concedes that he is a resident of New Jersey. The fact that Mr. Pearlman may be a member of the New York Bar does not make him a domiciliary of New York. Accordingly, the Court is without personal jurisdiction over the defendant Morris Pearlman unless and until service is effectuated on him within the State of New York.

Defendant Morris Pearlman's motion to dismiss the action as against him for lack of personal jurisdiction is granted.

Settle order on notice.

Dated: New York, N. Y.
July 16, 1965.

DUDLEY B. BONSAL
U. S. D. J.

Order Granting Motion by D. J. Bonsal

At a Term for the Hearing of Litigated Motions of the United States District Court for the Southern District of New York, held at the Courthouse, Foley Square, Borough of Manhattan, New York City, on the day of August, 1965.

Present—Hon. Dudley B. Bonsal, District Judge

[Same Title]

The defendant, Morris F. Pearlman, by his attorney, Arthur Stoll, appearing specially for the purposes of this motion having duly moved for an order dismissing the action as against him, for lack of personal jurisdiction over him, and the said motion having regularly come on to be heard,

Now, upon reading and filing the Notice of Motion dated June 24, 1965, the affidavit of Morris F. Pearlman verified the 24th day of June, 1965, and the affidavit of Arthur Stoll, verified the 12th day of July, 1965, all in support of the motion, the summons and complaint heretofore served herein, and upon the affidavits of Irma Grossman and David Grossman in opposition thereto, verified the 9th day of July, 1965, and after hearing Arthur Stoll, attorney for the defendant, in support of said motion, and Irma Grossman in opposition thereto, and after due deliberation having been had thereon, and upon the filing of the opinion of this Court dated July 16, 1965,

Now, upon motion of Arthur Stoll, attorney for the said defendant Morris F. Pearlman, appearing specially, it is

Ordered that the said motion be and the same is hereby granted, and it is further

Ordered that this action be and it is hereby dismissed as against the defendant Morris F. Pearlman for lack of personal jurisdiction.

.....

U. S. D. J.

Decision by Hon. Judge Wyatt

IRMA GROSSMAN and DAVID GROSSMAN,

Plaintiffs,

v.

BERNARD PEARLMAN, ALAN KRUMHOLZ and MORRIS PEARLMAN,

Defendants.

(65 Civ. 1696)

This is a motion by plaintiffs, acting for themselves without an attorney, "for an order changing the venue from the State of New Jersey, Hudson County, New Jersey #213822-63 to the Federal District Court".

The plaintiffs were in Court on August 17, 1965, and at the request of Mrs. Grossman, a Reporter recorded the hearing of the motion.

It appears from the moving papers and from the statements of Mrs. Grossman in Court that she and her husband began a civil action in the Superior Court of New Jersey—Law Division—Hudson County against the three defendants named in the caption of the present moving papers. It is this action which the present motion seeks to have transferred to this Court. Apparently there is already in this Court an action by plaintiffs, the file number of which action was placed by plaintiffs on these moving papers.

As explained to plaintiffs in Court, there is no power in this Court to order the transfer to this Court of an action pending in a State Court in New Jersey.

The motion is therefore denied.

SO ORDERED.

Dated: August 18, 1965

INZER B. WYATT
United States District Court

Opinion

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 163—September Term, 1965.

(Argued November 16, 1965 Decided December 2, 1965.)

Docket No. 30054

IRMA GROSSMAN and DAVID GROSSMAN,
Plaintiffs-Appellants,

against

BERNARD PEARLMAN, ALAN KRUMHOLZ and MORRIS F. PEARLMAN,
Defendants-Appellees.

Before MEDINA, WATERMAN and FRIENDLY, Circuit Judges.

Appeals from two orders of the United States District Court for the Southern District of New York, consolidated for argument, Dudley B. Bonsal and Inzer B. Wyatt, Judges.

Plaintiffs appeal from an order dismissing the action as against defendant Morris F. Pearlman for lack of jurisdiction over the person, and from another order denying a motion, stated to be made pursuant to 28 U.S.C., Section 1404(a), for the transfer to the District Court for the Southern District of New York of an action pending in a New Jersey State Court and for the consolidation of such action with the one in which the motion for transfer is made. Memorandum opinions below not reported. Each of said orders is affirmed, without costs.

IRMA GROSSMAN and DAVID GROSSMAN, New York, N. Y., *plaintiffs-appellants, pro se.*

ARTHUR STOLL, New York, N. Y., *for defendant-appellee Morris F. Pearlman.*

MEDINA, Circuit Judge:

There are before us two appeals that have been consolidated for the purpose of argument. On both appeals we

have heard oral argument by each of the plaintiffs-appellants appearing *pro se*. The first appeal is from an order of Judge Bonsal quashing service of process made on defendant-appellee Morris F. Pearlman. The second appeal is from an order of Judge Wyatt denying a motion, purportedly made pursuant to the provisions of 28 U.S.C., Section 1404(a), to transfer an action pending in the New Jersey Superior Court to the District Court for the Southern District of New York and to make it "part of this suit after the change of venue." We affirm both orders, but without costs.

The sequence of events culminating in these two appeals appears to have started when a suit to recover damages for personal injuries was commenced in a New Jersey State Court. Feeling themselves aggrieved by the acts and statements of their attorneys, or those purporting to be such, plaintiffs-appellants brought an action in the Superior Court of New Jersey bearing the same title as the action in which these appeals are taken, namely "Irma Grossman and David Grossman, Plaintiffs vs. Bernard Pearlman, Alan Krumholz and Morris F. Pearlman, Defendants." It is stated in one of plaintiffs-appellants' affidavits that the New Jersey action against Morris F. Pearlman was dismissed for some fault in pleading. Thereafter, and on June 3, 1965, plaintiffs-appellants filed a new complaint in the District Court for the Southern District of New York alleging substantially the same claims for relief and against the same parties as were sued in the action in the New Jersey Superior Court, with an additional "count" against Morris F. Pearlman.

I

The motion to quash service on Morris F. Pearlman in Jersey City on June 8, 1965 was properly granted by Judge Bonsal. Jurisdiction of subject matter is based upon diversity of citizenship. There is no dispute of the

fact that Morris F. Pearlman is domiciled in the State of New Jersey and is a citizen, inhabitant and resident of that State. The provisions of Rule 4(e) of the Federal Rules of Civil Procedure applicable to service of summons on a person not an inhabitant or not found within the state in which the district court is held provides:

> "Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to him to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of his property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule."

The New York Civil Practice Law and Rules are explicit. Section 313 provides that service without the state may be made upon a person domiciled within the state or "subject to the jurisdiction of the courts of the state under section 301 or 302." Section 301 merely precludes an interpretation that there shall be a limitation upon the acquisition of jurisdiction over persons, property or status as previously permitted. Thus the controlling provision is to be found in Section 302, authorizing jurisdiction over the person of a non-domiciliary "as to a cause of action arising from any of the acts enumerated in this section," to wit:

> "1. transacts any business within the state; or
>
> 2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or
>
> 3. owns, uses or possesses any real property situated within the state."

The charges made in the complaint are plainly stated to have reference to conduct and statements of defendants alleged to have been done or made within the State of New Jersey. There is not the remotest suggestion or hint in the complaint that any of the causes of action alleged arose out of the transaction of any business within the State of New York or out of the ownership, use or possession of any real property within the State of New York. No tortious act is alleged to have been committed by any of the defendants within the State of New York.

It is immaterial that Morris F. Pearlman may have been admitted to practice law in New York. Nor is it of legal consequence on the issue of *in personam* jurisdiction, as appellants contend, that only a few miles separate the State of New Jersey from the State of New York.

II

On the second appeal we must first dispose of the question of jurisdiction to entertain the appeal even if the parties have not raised the point. Generally speaking orders granting or denying motions for transfers pursuant to the provisions of 28 U.S.C., Section 1404(a) are considered interlocutory and not appealable except by resort to mandamus. 28 U.S.C., Section 1651. Even then it is necessary to show some extraordinary circumstances. See *Lykes Bros. S.S. Co.* v. *Sugarman,* 2 Cir., 1959, 272 F. 2d 679; *Ford Motor Co.* v. *Ryan,* 2 Cir., 1950, 182 F. 2d 329, cert. denied, 340 U. S. 851. But the proceeding here is a spurious Section 1404(a) application. Appellants, having commenced their action in a New Jersey State Court, have tried to obtain a "change of venue," as they call it, to a federal court in New York. The very absurdity of this would have been plain to any lawyer, but, as plaintiffs explained to Judge Wyatt at the hearing, they do not wish to have anything to do with lawyers. The fact remains,

however, that, taking a realistic view of the matter, unless we hold this order to be appealable, there will never be a time when appellants may test the validity of the order by review in this or any other court. The motion for removal, or transfer or for a "change of venue," or whatever else it may be called, would seem to be a separate proceeding *sui generis,* and it rests on its own bottom, even though in form an appendage to this federal case. In any event, Judge Wyatt's ruling disposes with finality of appellants' effort to move the New Jersey case out of the New Jersey Superior Court. The situation here is, we think, analogous to that in *Cohen* v. *Beneficial Industrial Loan Corp.,* 1949, 337 U. S. 541. See also, *Horizons Titanium Corporation* v. *Norton Company,* 1 Cir., 1961, 290 F. 2d 421, 423-24.

The motion to transfer was, of course, properly denied. No such procedure is authorized by any statute or rule of court and there seems little likelihood that it ever will be.

Each of the two orders is affirmed, without costs.

Order Denying Rehearing

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

[SAME TITLE]

Before MEDINA, WATERMAN and FRIENDLY, Circuit Judges.

On Petition for Rehearing.

Irma Grossman and David Grossman,
New York, N. Y.,
plaintiffs-appellants, *pro se.*

Petition for rehearing denied.

/s/ Harold R. Medina

/s/ Sterry R. Waterman

---

per HRM

/s/ Henry J. Friendly

U.S.C.JJ.

January 25, 1966

Letter dated November 1, 1962 from Morris Pearlman, Esq. to David T. Grossman

SWarthmore 5-2828

Law Offices
PEARLMAN & PEARLMAN

921 Bergen Avenue
Trust Company of New Jersey
Jersey City 6, N. J.

MORRIS F. PEARLMAN
NATHAN PEARLMAN

RUTH W. PEARLMAN

November 1, 1962.

Mr. David T. Grossman
c/o Strauss Stores
658 Newark Avenue
Jersey City, N. J.

Re: Grossman vs. Stubbs, et al

Dear Mr. Grossman:

Pursuant to your request, we informed the Court that the case has to be tried after the first of the year. The tentative new date is January 21, 1963.

We have advanced money for medical reports and medical testimony. It is now necessary to have your wife re-examined by Dr. Lieb, Dr. Reilly and by a gynecologist. This means additional payment for medical reports and for the testimony of the doctors who will be called to the re-trial of the case.

To pay the doctors I shall need about $300.00. In order to make it easier for you, I settled your case for your personal injuries, which has nothing at all to do with your wife's case, for $350.00. I have prepared a General Release so that we can get the money for you now, and you can use the money temporarily to take care of the doctors' expenses.

Letter dated November 1, 1962 from
Morris Pearlman, Esq. to David T. Grossman

I told you this when I was at your store, and asked you to sign the Release but you said your wife refused to allow you to sign any papers.

I am not forcing you to sign any Release; if you have the money and want to turn it over to me to use to pay the doctors I will arrange for all of these examinations during the later part of November or early in December.

Please advise me whether you want to sign the Release and get the money from the company, or that you have $300. to advance for the doctors as indicated.

I would appreciate hearing from you upon receipt of this letter.

Very truly yours,

MORRIS F. PEARLMAN
Morris F. Pearlman

MFP:esl

Letter dated November 21, 1961 from Alan L. Krumholz, Esq. to Dr. Samuel Stromberg

Law Offices
PEARLMAN & KRUMHOLZ
Spingarm Arcade Building
591 Summit Avenue
Jersey City 6, N. J.

Oldfield 8-5232
6036

BERNARD PEARLMAN
ALAN KRUMHOLZ

November 21, 1964

Dr. Samuel Stromberg
1780 University Avenue
Bronx, N. Y.

Dear Dr. Stromberg:

I have written you on several occasions with reference to your treatment of Irma Grossman for the accident of June 11, 1961.

Mrs. Grossman has spoken highly of you, and I want you to feel that we do not wish in any way to put you out. However, I am now confronted with a motion to dismiss her case for failure to supply the medical information which is required by interrogatories under the rules of court. I must know the following information:

(1) Your diagnosis of all of her injuries.

(2) Dates of treatment to date

(3) Amount of your bill to date

(4) Nature of treatment which you have rendered to the various parts of the body.

Letter dated November 21, 1961 from Alan L. Krumholz, Esq. to Dr. Samuel Stromberg

(5) Your prognosis as to various parts of the body involved.

Your cooperation will be greatly appreciated. Stamped envelope is enclosed to facilitate your reply.

Very truly yours,

PEARLMAN & KRUMHOLZ

By ALAN L. KRUMHOLZ
Alan L. Krumholz

ALK:cf

cc: Mrs. Irman Grossman
287 Avenue C
New York City, N. Y.

Letter dated October 19, 1964 from Clerk of Bergen County Court

COUNTY OF BERGEN
OFFICE OF THE COUNTY CLERK
(SEAL)
Administrative Building
Hackensack, N. J.
DIamond 2-2200

Alexander Allan
County Clerk
Fulton R. Hardman
Deputy County Clerk
William M. Einreinhofer
Deputy County Clerk

October 19, 1964

Mrs. D. Grossman
287 Avenue C
New York, New York

Re: Grossman, et al vs Stubbs, et al
Docket No. 61-646

Dear Madam:

Replying to your letter of October 10, 1964.

Our file does not contain interrogatories for David T. Grossman. I have also checked motions in this case and do not find a motion filed during November, 1961.

Yours very truly,

ALEXANDER ALLAN
Alexander Allan
Bergen County Clerk

by O. WRIGHT